

Exhibit 4

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

4 ANTHONY JACINO and GLASS STAR)
5 AMERICA, INC.,)

6 Plaintiffs,)

7 vs.)

16-CV-01704(BMC)

8 ILLINOIS TOOL WORKS, INC., ITW)
9 GLOBAL BRANDS, ITW POLYMERS &)
10 FLUIDS, and PERMATEX INC.,)

11 Defendants.)

12 -----)
13 ILLINOIS TOOL WORKS, INC.,)

14 Counterclaimant,)

15 vs.)

16 GLASS STAR AMERICA, INC.)

17 Counterclaimant.)

18 -----)

19 ATTORNEYS' EYES ONLY DEPOSITION OF
20 JOSEPH JACINO

21 Farmingdale, New York
22 Wednesday, March 22, 2017

23
24 Reported by:
25 Philip Rizzuti
JOB NO. 120593

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March 22, 2017
9:56 a.m.

Deposition of JOSEPH JACINO,
held at the offices of TSG Reporting
Company, 855 Conklin Street,
Farmingdale, New York, pursuant to
notice, before Philip Rizzuti, a
Notary Public of the State of New York

A P P E A R A N C E S:

IntellectuLaw

Attorneys for Plaintiffs

25 Little Harbor Road

Mount Sinai, New York 11766

BY: PANAGIOTA BETTY TUFARIELLO, ESQ.

THOMPSON COBURN

Attorneys for Defendants

One US Bank Plaza

St. Louis, Missouri 63101

BY: JUSTIN MULLIGAN, ESQ.

ALSO PRESENT:

CHRISTIAN BIDONDE, Videographer

ANTHONY JACINO, JR.

1
2 IT IS HEREBY STIPULATED AND AGREED,
3 by and between counsel for the respective
4 parties hereto, that the filing, sealing and
5 certification of the within deposition shall
6 be and the same are hereby waived;

7 IT IS FURTHER STIPULATED AND AGREED
8 that all objections, except as to the form
9 of the question, shall be reserved to the
10 time of the trial;

11 IT IS FURTHER STIPULATED AND AGREED
12 that the within deposition may be signed
13 before any Notary Public with the same force
14 and effect as if signed and sworn to before
15 the Court.
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1 Joseph Jacino - attorneys' eyes only

2 THE VIDEOGRAPHER: This is the
3 start of media labelled numbered 1 of the
4 video recorded deposition of Joseph
5 Jacino in the matter of Jacino et al.
6 versus ITW et al., filed in the United
7 States District Court, Eastern District
8 of New York. Case number 16-CV-01704.

9 This deposition is being held at
10 855 Conklin Street, Farmingdale, New York
11 on March 22, 2017 at approximately 9:56
12 a.m. My name is Chris Bidonde, I am the
13 legal video specialist from TSG Reporting
14 Inc., headquartered at 747 Third Avenue,
15 New York, New York. The court reporter
16 is Phil Rizzuti in association with TSG
17 Reporting.

18 Will counsel please introduce
19 yourselves.

20 MS. TUFARIELLO:my name is
21 Panagiota Betty Tufariello, I am with the
22 law firm of IntellectualLaw, Law Offices of
23 P.B. Tufariello, P.C. located at 25
24 Little Harbor Road, Mount Sinai, New York
25 11766. I am here on behalf of the

1 Joseph Jacino - attorneys' eyes only
2 plaintiff Anthony Jacino and Glass Star
3 Inc. I am also counsel for the witness
4 today who is appearing pursuant to a
5 subpoena, the witness being Joseph
6 Jacino.

7 MR. MULLIGAN: And on behalf of
8 the defendant ITW, Justin Mulligan with
9 Thompson Coburn at One US Bank Plaza, St.
10 Louis, Missouri 63101.

11 THE VIDEOGRAPHER: Will the court
12 reporter please swear in the witness.

13 J O S E P H J A C I N O, called as a
14 witness, having been duly sworn by a
15 Notary Public, was examined and
16 testified as follows:

17 EXAMINATION BY

18 MR. MULLIGAN:

19 Q. Could you please state your name
20 for the record?

21 A. Joseph Gerald Jacino.

22 Q. Thank you. What is your current
23 address?

24 A. 12 Sycamore Drive, East Moriches,
25 New York 11940.

1 Joseph Jacino - attorneys' eyes only
2 the exclusive right together with the right to
3 sub license that right to make, use and sell
4 the works embodied in the United States
5 Copyright Registration numbers TX 4-945-858
6 and TX 4-910-938; is that correct?

7 A. Yes.

8 Q. Do you have any information as to
9 how Mr. Jacino granted Glass Star the
10 exclusive right to these registrations?

11 A. I don't know that.

12 Q. Do you know whether or not Mr.
13 Jacino got his brother Gerald's permission to
14 grant that exclusive license?

15 A. Could you repeat that please?

16 Q. Yes. Do you know if Anthony
17 Jacino ever got his brother Gerald's
18 permission to provide Glass Star with an
19 exclusive right to the registrations?

20 A. I do not know that question, I
21 really don't, no.

22 Q. Do you know or are you familiar
23 with any writing between Mr. Jacino and Glass
24 Star providing this exclusive right to the
25 registrations?

1 Joseph Jacino - attorneys' eyes only

2 A. I do not.

3 Q. If you look to paragraph 18, it
4 says on April 20, 2006 Glass Star and ITW
5 Performance Polymers Consumer Division, a
6 division of Illinois Tool Works Inc. entered
7 into an agreement under which Glass Star
8 manufactured private label for ITW on the
9 following products.

10 And one of those would be the
11 windshield repair kit. Did I read that
12 correctly?

13 A. Yes.

14 Q. And then later on in paragraph 18
15 it says that the license agreement was annexed
16 to the complaint as Exhibit C; is that
17 correct?

18 A. Yes.

19 Q. Then just under paragraph 19 it
20 says that under the license agreement Glass
21 Star granted ITW exclusive rights to use the
22 works embodied in the United States copyright
23 registrations that we previously mentioned; is
24 that correct?

25 A. I see that here, yes.

1 Joseph Jacino - attorneys' eyes only

2 Q. Do you know if Glass Star ever
3 applied for loans with any other banks?

4 A. No.

5 Q. Did Glass Star have any loans from
6 any of the family members or owners of the
7 company?

8 A. Not that I am aware of.

9 Q. Do you know whether or not Glass
10 Star has ever had a sheriff's levy placed on
11 the property?

12 A. No I am not aware of that.

13 MS. TUFARIELLO: Which property.

14 Q. The company office building?

15 A. No.

16 Q. As we discussed a little earlier,
17 the agreement between Glass Star and ITW was
18 for a private line of products; is that
19 correct?

20 A. Correct.

21 Q. So ITW was not selling a Glass
22 Star branded product; is that correct?

23 A. Correct.

24 Q. It would be selling a product
25 under a name such as Permatex or VersaChem or

1 Joseph Jacino - attorneys' eyes only

2 Bullseye like we discussed; is that correct?

3 A. That is correct.

4 Q. Do you know whether or not any of
5 those private line packages included the name
6 Glass Star on them?

7 A. That I am not aware of. I am not
8 sure.

9 Q. For ITW's private lines that Glass
10 Star manufactured was new packaging designed
11 or did they use existing Glass Star packaging?

12 A. This I don't know, I wasn't
13 involved in it.

14 MS. TUFARIELLO: Counsel, we have
15 been going for an hour.

16 MR. MULLIGAN: You want to take a
17 break?

18 MS. TUFARIELLO: Yes, please.

19 MR. MULLIGAN: Perfect, take a
20 break.

21 THE VIDEOGRAPHER: The time is
22 10:55 a.m., this concludes media 1 for
23 the record.

24 (Recess taken.)

25 THE VIDEOGRAPHER: The time is

1 Joseph Jacino - attorneys' eyes only
2 front of you, pull that back out?

3 MS. TUFARIELLO: Exhibit 7.

4 MR. MULLIGAN: Correct.

5 A. Yes I have it.

6 Q. Turn to page 6 of Exhibit 7, do
7 you see the second claim for relief for unfair
8 competition and false designation of origin;
9 in the bold towards the bottom of the page?

10 A. Yes I see it.

11 Q. Then in paragraph 38 it states,
12 defendant's ongoing actions of selling
13 windshield repair kits with packaging and
14 inserts identical to packaging and inserts
15 used during the nine year time period during
16 which the license agreement between Glass Star
17 and the defendants was in effect constitute
18 unlawful palming off on Glass Star's patented
19 invention by creating the false designation in
20 commerce that defendant's products were and
21 still are manufactured by Glass Star, or that
22 they are still approved or authorized by Mr.
23 Jacino.

24 Did I read that correctly?

25 A. Yes.

1 Joseph Jacino - attorneys' eyes only

2 Q. So what packaging and inserts are
3 being referred to in this paragraph?

4 A. Windshield repair kits.

5 Q. Are those the same windshield
6 repair kit packaging and inserts that you
7 claim infringe Glass Star's copyright
8 registrations?

9 A. Could you repeat that?

10 Q. Yes. Are those the same Glass
11 Star repair kit packages and instructions that
12 you claim also infringe Glass Star's copyright
13 registrations?

14 A. Yes.

15 Q. Do you know whether or not Glass
16 Star produces any do it yourself private lines
17 for other companies?

18 A. Could you repeat that?

19 Q. Do you know whether or not Glass
20 Star produces any private line and let me
21 rephrase it.

22 Between 2013 and 2015 are you
23 aware of whether or not Glass Star was
24 producing any other private lines for other
25 companies?

1 Joseph Jacino - attorneys' eyes only
2 was about?

3 A. No, I don't remember, just that
4 there was rumblings.

5 Q. And you don't remember who those
6 rumblings were?

7 A. No.

8 MS. TUFARIELLO: Please allow the
9 attorney to finish his question.

10 Q. In 2014 and 2015 are you aware of
11 whether Glass Star was having trouble meeting
12 it's deadlines for production in the
13 windshield repair kit line?

14 A. No, I don't, I wasn't involved in
15 it much, so I don't recall.

16 Q. So you have no knowledge on
17 whether or not Glass Star was on time or
18 behind on any orders in 2014 and 2015?

19 A. No.

20 Q. In 2014 or 15 are you aware of
21 anyone at Glass Star asking ITW to stop
22 placing orders to allow them to catch up on
23 orders?

24 A. No, I am not aware of that.

25 Q. Are you aware of any facts

1 Joseph Jacino - attorneys' eyes only
2 professional side of the business and bring in
3 sales for that, and production, be involved in
4 all aspects of the professional products.

5 Q. In the development and launch of
6 Glass Star as a company do you remember anyone
7 mentioning or talking about copyright
8 registrations that Clear Star had previously
9 owned?

10 A. No. No, I wasn't involved in
11 that.

12 Q. Are you aware of any documents
13 that provide Glass Star America with the right
14 to use Clear Star's copyright registrations?

15 A. I am not aware of them.

16 Q. On the last sentence on the same
17 exhibit it says, he also has knowledge of the
18 roles played by other persons listed in these
19 disclosures as they relate to the forgoing
20 topics.

21 Would that be in general your
22 knowledge of Mr. Jacino Sr., Anthony Jacino
23 Jr. and Vince Immordino and the other people
24 listed throughout here, their involvement with
25 Glass Star?

1 Joseph Jacino - attorneys' eyes only

2 2:43 p.m., this ends media 4, off the
3 record.

4 (Time noted: 2:43 p.m.)

5 _____
6 JOSEPH JACINO

7
8 Subscribed and sworn to before me
9 this ___ day of _____, 2017

C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

COUNTY OF NEW YORK)

I, Philip Rizzuti, a Notary
Public within and for the State of New
York, do hereby certify:

That JOSEPH JACINO, the witness
whose deposition is hereinbefore set forth,
was duly sworn by me and that such
deposition is a true record of the
testimony given by the witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I am
in no way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have
hereunto set my hand this 3rd day of
April, 2017.

PHILIP RIZZUTI